

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-CR-20320-2

DANIEL THOMAS,

Defendant.

**OPINION AND ORDER GRANTING MOTION
PURSUANT TO 28 U.S.C. § 2255 FOR SENTENCE REDUCTION**

On October 14, 2011, Defendant Daniel Thomas moved *pro se* for reduction of his 60-month term of imprisonment under 18 U.S.C. § 3582(c)(2) based on a guideline sentencing range that had been subsequently lowered and made retroactive pursuant to 28 U.S.C. § 994(u). Counsel was appointed to represent the defendant, and the court was advised in a memorandum filed by counsel that defendant was not eligible for such sentence reduction. (12/19/2011 Notice.) The motion was denied and Defendant appealed. On November 1, 2012, the Court of Appeals reversed this court's denial in view of a subsequent Supreme Court decision in *Dorsey v. United States*, 132 S. Ct. 2321, 2326 (2012) that made clear that the sentencing court had the discretion to impose a sentence below the otherwise mandatory 60-month as was thought to be required in this case. The Court of Appeals directed this court to interpret Defendant's motion for sentence reduction as a petition under 28 U.S.C. § 2255, to grant the petition, and to impose an appropriate, fully discretionary sentence.

On December 12, 2012, the court consulted in chambers with counsel for the Defendant and the Government, and was informed that both parties are in agreement that

Defendant's motion, so construed, should be granted; both are also in agreement that there is no need to require the Defendant to be personally present for re-sentencing.

Accordingly,

IT IS ORDERED that Defendant's motion for sentence reduction [Dkt. # 56] is GRANTED and that a sentence of 41 months is hereby imposed. A Judgment and Commitment Order shall be separately issued.

Date: February 21, 2013

s/Robert H. Cleland
ROBERT H. CLELAND
United States District Judge

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 21, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522